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MAY 18 2017

Judge Ricardo S. Martinez

AT SEATTLE  
CLERK U.S. DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
DEPUTY  
BY

UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA, *ex rel.*  
KAT NGUYEN-SELIGMAN,

Plaintiff,

v.

LENNAR CORPORATION, a Delaware  
corporation; UNIVERSAL AMERICAN  
MORTGAGE COMPANY, LLC, a Florida  
corporation; and EAGLE HOME  
MORTGAGE OF CALIFORNIA, INC., a  
California corporation,

Defendants.

CASE NO. 14-cv-1435-RSM

**FILED UNDER SEAL**

Noted for Consideration on:  
May 18, 2017

**UNITED STATES' EX PARTE APPLICATION**  
**FOR AN EXTENSION OF TIME**  
**TO CONSIDER ELECTION TO INTERVENE**

Pursuant to the False Claims Act, 31 U.S.C. § 3729–33 (FCA), the United States of America respectfully applies to the Court *ex parte* for an Order extending for six months, or until November 20, 2017, the period during which the United States will determine whether or not to intervene in this case, and for an extension of time during which this case will remain under seal. **Relator's counsel has been consulted and concurs with this request.**

UNITED STATES' *EX PARTE* APPLICATION  
FOR AN EXTENSION OF TIME - 1  
(CASE NO. 14-cv-1435-RSM)  
FILED UNDER SEAL

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## **PROCEDURAL HISTORY**

On or about September 18, 2014, Relator Kat Nguyen-Seligman filed a Complaint in this action under seal under the *qui tam* provisions of the FCA, 31 U.S.C. § 3730, which permit individuals to file actions on behalf of the United States, alleging violations of the FCA. The Relator completed service on the United States on or about September 23, 2014. The FCA expressly contemplates that the government's investigative period may be extended more than once upon a showing by the United States of "good cause." *Id.* § 3730(b)(3). This is the government's sixth request for an extension of the seal, which is currently scheduled to expire on May 19, 2017.

## **THE RELATOR'S ALLEGATIONS**

As the Court is aware, Defendant Lennar Corporation (Lennar) is a Delaware Corporation headquartered in Miami, Florida that builds homes throughout the United States, including homes in the Western District of Washington. Defendant Universal American Mortgage Company, LLC, (UAMC) is a subsidiary of Lennar and provides financing and related services to buyers of homes built by Lennar. Eagle Home Mortgage of California (Eagle Home) is also a subsidiary of Lennar, which provides financing and related services to homebuyers. The entities are hereafter referred to collectively as "the Lennar Companies." The United States Department of Housing and Urban Development (HUD) insures the Lennar Companies' home mortgages. Under HUD's mortgage insurance program, if a homeowner defaults on a loan and the mortgage holder forecloses on the property, HUD pays the mortgage holder the balance of the loan, and then assumes

1 ownership and possession of the property. As part of HUD's mortgage insurance program,  
2 HUD requires lenders to submit certain certifications ensuring that loans comply with  
3 HUD's standards and guidelines designed to reduce the risk to HUD. Relator alleges that the  
4 Lennar Companies engaged in several schemes to defraud HUD, including, but not limited  
5 to, knowingly presenting or causing to be presented false records, statements, and  
6 certifications to HUD, material to HUD's insurance of the Lennar Companies' residential  
7 home mortgages, and ultimately the payment of any foreclosure claims.  
8

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10 Specifically, Relator asserts that the Lennar Companies failed to undertake  
11 meaningful quality control for a significant portion of its HUD-insured loans. Relator  
12 alleges that the Lennar Companies failed to sufficiently perform required due diligence on  
13 HUD-insured loans, including, but not limited to: (1) failing to investigate loans flagged by  
14 auditors as violating HUD guidelines; (2) failing to verify information provided in loan files;  
15 and (3) failing to ensure that funds used to close a loan were properly traced.<sup>1</sup> Relator  
16 alleges that these practices resulted in the Lennar Companies' certification of thousands of  
17 ineligible mortgages to HUD.  
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### 21 THE GOVERNMENT'S INVESTIGATION

22 As the Court knows, the government was investigating the Lennar Companies' loan  
23 practices prior to the filing of Relator's suit. The government made significant progress  
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27 <sup>1</sup> Tracing is important because it ensures that funds used to secure a mortgage are from an allowable source. Using  
28 funds from an unallowable source may mislead the lender, and eventually HUD, as to the potential mortgage holder's credit risk.

1 during its pre-existing investigation. Prior to the filing of Relator's suit, the government  
2 issued two HUD administrative subpoenas for documents and one Civil Investigative  
3 Demand (CID) requesting answers to interrogatories.<sup>2</sup> After Relator filed suit, the  
4 government promptly interviewed Relator and reviewed the documents provided by the  
5 Relator.  
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7  
8 Since the last extension of the seal in this matter, the government has attempted to  
9 work with the Lennar Companies' counsel to obtain documents that are required to conclude  
10 the government's investigation. The documents are in response to a CID that the  
11 government issued in 2015. The CID requested Lennar documents relating to Lennar's  
12 knowledge of, and communications concerning, UAMC's origination, underwriting, and  
13 quality control of Federal Housing Administration (FHA) mortgages. Specifically, the  
14 government has requested documents from five key Lennar employees: Fred Rothman,  
15 Eastern Regional President; Jeffry Roos, Western Regional President; Jonathan Jaffe, Vice  
16 President and Chief Operating Officer; Richard Beckwitt, President; and Frank Llano,  
17 Executive Director of Accounting. However, Lennar has refused to produce documents from  
18 these custodians.  
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26 <sup>2</sup> The United States may issue a CID "[w]henver the Attorney General, or a designee, has reason to  
27 believe that any person may be in possession, custody, or control of any documentary material or  
28 information relevant to a false claims law investigation . . . ." 31 U.S.C. §3733(a)(1).

1 Since the government issued the CID, the government has attempted to work with  
2 Lennar to obtain relevant documents and information. For example, the government  
3 attempted to work cooperatively with Lennar to determine which custodians' emails and  
4 other electronically-stored information (ESI) should be searched. After extensive discussion,  
5 Lennar produced the first emails from a Lennar employee—John Hillin, Lennar's Director of  
6 Internal Audit—on February 25, 2016, almost a year after the government issued the CID.  
7 Thereafter, over a period of six months, Lennar produced emails for six additional  
8 custodians. However, Lennar has refused to produce documents from the above-identified  
9 five key individuals. Lennar Companies' counsel has objected to the requested documents  
10 because they do not pertain to "UAMC's FHA loan originations."  
11

12 The requested documents are required so that the government can determine if, and to  
13 what extent, Lennar, UAMC's parent company, was involved in or aware of UAMC's  
14 underwriting practices. This question is critical given that mortgages underwritten by  
15 UAMC during the relevant time period were almost exclusively for homes built and sold by  
16 Lennar. Moreover, the vast majority of homes built and sold by Lennar were financed  
17 through UAMC mortgages. Furthermore, during the course of the government's  
18 investigation, UAMC has distributed over \$100 million in net profits to Lennar. For this  
19 reason, the government is in the process of seeking authority to enforce the CID. Without  
20 the difficulty in obtaining the requested documents, the government believes that its  
21 investigation would be complete. However, the investigation has stalled since, to date, the  
22 government has been unable to obtain the requested documents.  
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1 During this next extension period, the government hopes to obtain the requested  
2 documents and determine what knowledge Lennar had of UAMC's underwriting practices.  
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4 Once the government has access to the requested documents and has had an opportunity to  
5 review and consider the documents, the government anticipates presenting the findings of its  
6 investigation to UAMC counsel. The government believes that this will be the final  
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8 extension period assuming that it is able to obtain the information necessary to understand  
9 the extent to which Lennar had knowledge of UAMC's underwriting practices.

10 As noted at the outset, Relator's counsel has been consulted and has no objection to  
11 this request for additional time.  
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### 13 ARGUMENT AND AUTHORITIES

14 The FCA expressly contemplates the United States obtaining extensions of time to  
15 make its intervention decision in *qui tam* actions. See 31 U.S.C. § 3730 (b)(3) (the United  
16 States "may, for good cause shown, move the court for extensions of time . . ."). For the  
17 reasons set forth above, the government contends that the "good cause" standard is satisfied  
18 in this case.  
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21 The United States also respectfully requests that the Court order that the Complaint  
22 and other filings be kept under seal through November 20, 2017, unless otherwise ordered by  
23 the Court. Such an extension of the seal is contemplated by, and consistent with, the express  
24 terms of the FCA. See 31 U.S.C. § 3730(b)(3). Experience demonstrates that concluding a  
25 non-judicial resolution of this matter, should the facts so warrant, will be facilitated if  
26 Relator's allegations have not yet been publicly disseminated.  
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**CONCLUSION**

Accordingly, the United States requests that the Court enter an Order extending for six months, until and including November 20, 2017, the period for the United States to make its decision whether to intervene in this case and providing that during this time the case will remain under seal.

Dated this 18th day of May, 2017.

Respectfully submitted,

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